

Subpart L – Tribal/Native Broadband Fund Support Mechanism

CODE OF FEDERAL REGULATIONS

TITLE 47 - Telecommunications

PART 54 – Universal Service

§ 54.1001 “Native Americans” Universal Service Support Mechanism

(a) The Administrator for the Tribal/Native Broadband Fund (TBF) created by this subpart shall be the Universal Service Administrative Company (USAC).

(b) Only eligible telecommunications carriers (ETCs) that provide broadband and regulated communications services to Native American tribes/groups, i.e. American Indians, Alaska Natives, and Native Hawaiians on Tribal lands, and elect to participate in the distribution of Tribal/Native Broadband Funds shall be deemed to be participating eligible recipients upon completing the carrier certification requirements pursuant to § 54.1009. “Tribal lands” include American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Alaska Native Village Statistical Areas, and Hawaiian homelands, as well as the communities situated on such lands.

(c) All data submissions to the Administrator that are required by this title shall be accompanied by the following certification statement signed by the officer or employee responsible for the overall preparation of the data submission:

CERTIFICATION

I am (title of certifying officer or employee). I hereby certify that I have overall responsibility for the preparation of all data in the attached data submission for (name of carrier) and that I am authorized to execute this certification. Based on information known to me or provided to me by employees responsible for the preparation of the data in this submission, I hereby certify that the data have been

examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission.

Date: _____

Name: _____

Title: _____

(Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001).

§ 54.1004 Obligations of the Participating Eligible ETCs and the Administrator.

(a) Each participating eligible ETC may submit to the Administrator, on a quarterly basis, on the last business day of March, June, September, and December of each year annual part 32 financial accounting data for the purpose of updating its preliminary TBF support amounts pursuant to § 54.1005.

(b) In addition to the information submitted pursuant to paragraph (a) of this section, each participating eligible ETC must submit to the Administrator its calendar year part 32 financial accounting data pursuant to § 54.1006 on or before June 30th of the subsequent year.

(c) A participating eligible ETC shall receive support pursuant to this subpart only after it has filed all of the information required by paragraphs (a) and (b) of this section, where applicable, and complied with the carrier certification pursuant to § 54.1009. A participating eligible ETC shall receive payment of support pursuant to this subpart only for such months the carrier actually provides access to Commission required broadband speeds (although see § 54.1010 Noncompliance) and regulated communications services to Native American tribes/groups on Tribal lands.

(d) Upon receiving the information required to be filed in paragraphs (a) and (b) of this section, the Administrator shall:

(1) Perform the calculations described in §§ 54.1005 and 54.1006 of this subpart, as applicable;

(2) Publish the results of these calculations showing Tribal/Native Broadband Fund support required in each participating eligible ETC study area;

(3) Collect the funds necessary to provide support pursuant to this subpart in accordance with subpart H;

(4) Distribute support calculated pursuant to the rules contained in this subpart, and

(5) Report quarterly to the Commission on the collection and distribution of funds under this subpart as described in § 54.701(g). Fund distribution reporting will be by state and by eligible telecommunications carrier within the state.

(e) The Administrator shall ensure that there is periodic reconciliation of support payments annually.

(f) In the event that a participating eligible ETC acquires additional tribal and/or non-tribal exchanges, the acquisition must be reported to the Administrator and included in the determination of its study area TBF support pursuant to § 54.1005, beginning with the next support recalculation pursuant to (a) and (b) of this section.

§ 54.1005 Preliminary Tribal/Native Broadband Fund support amounts for a participating eligible ETC calculated by the Administrator.

(a) The TBF support amount will provide participating eligible ETCs with “net gap” support sufficient to recover any revenue shortfall related to the provision of regulated communications services to American Indians, Alaska Natives, and Native Hawaiians.

(b) The TBF support amount for each participating eligible ETC is the overall revenue shortfall, if one exists, resulting from the comparison of 1) the projected annual revenue requirement (unseparated as to jurisdiction) for the provision of tribal/native regulated communications services with 2) the projected annual revenues to be received from such services at Lifeline or end-user rates not less than national benchmark rates.

(1) The unseparated revenue requirement will be calculated incorporating part 32 operating expenses, including taxes, plus a net income amount that would be necessary for the participating eligible ETC to achieve its required “Times Interest Earned Ratio” (TIER = $(\text{Total Fixed Charges} + \text{Net income}) / \text{Total Fixed Charges}$) supported by its loan documents, or, in the absence of a specific requirement a default TIER of 1.5.

(2) Revenues will be all revenues collected from regulated communications services, including but not limited to end user revenues, other USF support amounts, including but not limited to High Cost Loop Fund, Interstate Common Line Support, and Local Switching Support, and revenues received from FCC or state public utility commission approved individual tariffs or revenue pooling arrangements.

(3) The Commission will from time to time provide a schedule of national benchmark rates for regulated communications services, which will be used by the Administrator to impute revenue amounts where the participating eligible ETC end-user rates are determined by the Administrator to be less than national benchmark rates.

(4) If the participating eligible ETC serves non-tribal/non-native customers exceeding 50% of its total customer base in its study area, the calculated TBF shortfall, if it exists, will be adjusted downward to an amount reflecting only the pro-rata share of its tribal/native operations (the participating eligible ETC may use an average beginning and end-of-year ratio including tribal/native investment, regulated revenues, and number of customers to totals for the study area). The provisions of this section do not apply to Alaska, since all Alaska is Tribal lands.

(c) All pre-existing infrastructure investment and related operating expenses for the provision of regulated communications services, excluding non-regulated part 64 cost allocations, are eligible for TBF support, commencing with the start date of the TBF program as approved by the Commission.

(d) The preliminary TBF support amount is subject to an annual true-up adjustment pursuant to § 54.1006, comparing actual revenue requirement with actual revenue received.

§ 54.1006 True-up of Tribal/Native Broadband Fund support amounts calculated by the Administrator.

(a) The Administrator, using the schedule of calculations performed in § 54.1005 and participating eligible ETC calendar year externally audited part 32 financial accounting data, shall calculate the final TBF support amount for each participating eligible ETC.

(b) The Administrator will review the submitted participating eligible financial data and externally audited financial statements for the purpose of establishing its accuracy as a basis for true-up of the TBF preliminary support amounts paid-out by the Administrator during the concurrent calendar year. The Administrator will determine for each participating eligible ETC a true-up adjustment for the calendar year for payment/collection not later than the fourth quarter of the review year. A collection may be netted by the Administrator against TBF payments.

(c) If the participating eligible ETC disputes the Administrator's determination of the true-up adjustment required, it may appeal the matter to the Commission. Appeals will be timely made by the participating eligible ETC (within 90 days of notification by the Administrator). Appeals filed with the Commission will be acted upon within 180 days.

§ 54.1008 Periodic calculation.

Participating eligible ETC TBF support amounts will be calculated annually by the Administrator pursuant to § 54.1006 on or before September 30 of each year. The results must be used to finalize the TBF support amount and provide a true-up adjustment for application to prior year preliminary payments that were calculated pursuant to § 54.1005, and in accordance with the data submission schedule of § 54.1004(a).

§ 54.1009 Carrier certification.

(a) *Certification.* Carriers that qualify to be participating eligible ETCs pursuant to § 54.1001(b) and desire to receive support pursuant to §§ 54.1005 and 54.1006 must file a certification with the Commission and the Administrator stating that all Tribal/Native Broadband Fund support provided to such carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The certification must also state that the carrier provides all of its Native American customers with access to broadband speeds meeting or exceeding the Commission's minimum requirements. Support provided pursuant to the above referenced sections shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section. Eligible ETCs that

cannot comply with the Commission's minimum broadband speed requirements must provide the Commission and the Administrator with further certification pursuant to § 54.1010(b).

(b) *Certification Format.* A certification pursuant to this section may be filed in the form of a letter from an authorized representative for the carrier, and must be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. _____, and with the Administrator on or before the filing deadlines set forth below in paragraph (c) of this section. To remain an ETC eligible for TBF, all participating eligible recipients must provide the Administrator with a copy of its annual ETC recertification report filed with its state public utility commission. The recipient must also provide a copy of the state public utility commission certification letter provided to the Commission and the Administrator. If the recipient does not file a recertification with a state public utility commission, it must provide a copy of the recertification filed with the Commission.

(c) *Filing Deadlines.* In order for an ETC that provides broadband and other regulated communications services to Native American tribes/groups located on Tribal lands to receive Tribal/Native Broadband Fund support, such carrier must file an annual certification, as described in paragraph (b) of this section, on the date that it first files its projected Tribal/Native Broadband Fund support requirements pursuant to section 54.1004(a), and thereafter on June 30th of each year.

(d) *Public Record.* All of the certification filed by carriers pursuant to this section shall become part of the public record maintained by the Commission.

§ 54.1010 Noncompliance.

(a) Participating eligible ETCs that become noncompliant with the Commission's rules for Tribal/Native Broadband Fund support must notify the Administrator within 90 days of becoming noncompliant. To remain a participating eligible ETC the carrier must submit a plan to the Administrator, for its approval, explaining how it will regain compliance within 12 months, or, in the alternative if applicable, satisfy the noncompliance certification requirement set forth below in paragraph (b) of this section.

(b) *Satellite or other bandwidth limiting "Middle-mile" transport.* If an eligible ETC cannot comply with the Commission's minimum broadband speed requirements due to a bandwidth limiting transport facility that cannot be physically/electronically upgraded within a 12 month period, the carrier will request a waiver of the Commission's minimum broadband speed requirement and certify to the Commission and the Administrator that it does meet in all respects, other than minimum broadband speed requirements, eligibility to be a participating eligible ETC. The carrier will also certify that it does provide all of its Native American customers with access to download/upload minimum speeds of 128 kilobits per second/64 kilobits per second, respectively.